

the American people the opportunity to decide if the Constitution should be amended. It is time to let the people decide.

I yield the floor.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CHAFEE). Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

FLAG DESECRATION AMENDMENT

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S.J. Res. 12, which the clerk will report.

The assistant legislative clerk read as follows:

A resolution (S.J. Res. 12) proposing an amendment to the Constitution of the United States authorizing Congress to prohibit physical desecration of the flag of the United States.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I would like to say a few words about this amendment this morning because there seems to be a lot of misunderstanding about it. There are those who believe this amendment interferes with First Amendment rights and privileges. It does not. The media has largely portrayed this amendment as a ban on flag desecration. It is not. This amendment is, pure and simple, a restoration of the Constitution to what it was before unelected jurists, in a 5 to 4 decision, changed it. In 1989, five justices ruled that flag desecration, including burning the flag or any number of similar offensive acts, is speech. Four of them, led by the opinion of Justice Stevens, one of the most liberal members of the Court, found that such conduct does not constitute speech.

Fifty State legislatures, both red States and blue States, have called on us to pass this amendment. There are 60 up-front primary cosponsors of this amendment. There are at least six others who have said that they will vote for it. If that is all true, we are 1 vote short of having 67, with just a few who may still be undecided. We are hopeful that they will understand that this amendment simply says that "Congress shall have power to prohibit the physical desecration of the flag of the United States." In other words, in passing this amendment, we would give to Congress the power that the Supreme Court took away from it when they decided the Johnson case in 1989. That is very important to understand.

Today, the distinguished chairman of the Judiciary Committee, Senator SPECTER, is holding a hearing on Presidential signing statements, which he and some others believe actually take away power from the Congress of the United States.

We have heard various Members on both sides of the aisle get up and say that they are tired of the other branches of Government, meaning the executive and judicial branches, taking away powers from the Congress. This amendment would restore power to Congress. That is its importance.

The amendment does not ban anything. It does not require the creation of a statute. It does not say what is and what is not desecration of the flag. That would have to be defined later, assuming that the Congress decides, under its own power, through its own Representatives, to try to pass a statute that would define physical desecration of the flag. And if Congress did, at some point in the future, decide to exercise this power, then I believe that the good Members of Congress would very narrowly construe in a statute what is and what is not desecration of the flag.

Once again, fifty States, 50 State legislatures, every State in the Union has called for this amendment. Sixty-six Senators, both Democrats and Republicans, support this amendment. We are hopeful that there will be one or two others who will vote with us, and I believe if we get that 67th vote we will have 75.

In addition, anyone who tries to say that this proposed amendment interferes with First Amendment rights has not read it, as many in the media have not. This amendment would have no effect on the First Amendment. It merely returns the power to protect the flag back to the Congress of the United States.

In his speech yesterday, Senator DURBIN, my dear colleague from Illinois, who is the Democratic whip, suggested that this amendment is unnecessary. He based his assertion on the supposition that there are relatively few incidents of flag desecration. So why bother, was basically his argument. Why should we address what appears to be a matter of minor significance?

I will tell you why. As I stated, this amendment does not ban anything. But let me assume, as Senator DURBIN did, that it does. Just one incident, just one, is enough to justify action. One flag burning is enough, I think, for most people in this country. Principles are not creatures of convenience, despite assertions to the contrary.

As my colleagues know, 48 States, plus the District of Columbia, had anti-desecration measures on the books before 1989. It was then that five unelected judges told those 48 sovereign entities that they were wrong.

Do my colleagues know the basis for the ruling? Five lawyers decided that all of these 48 State legislatures, as

well as the District of Columbia, were wrong and that their measures were unconstitutional. But I ask, where does the Constitution say these measures are unconstitutional? Where in the text of the Constitution does it say this? The silence is deafening. We all know the Constitution does not say these measures are unconstitutional. Five lawyers came to this conclusion on the basis of a legal seance.

Now, I wonder, why did 48 States act in this area if anti-desecration laws are unnecessary? I will tell you why. Incidents of flag desecration are much more frequent than many of my colleagues have suggested.

The Citizens' Flag Alliance has been cataloguing reported incidents of flag desecration since 1994. Now, these are the incidents that are made public generally in the media. Their list is by no means comprehensive. There are many, many incidents of flag desecration, even some that are extremely offensive or even obscene, that are just not reported.

I know these people in the Flag Alliance. They are true citizen activists. They do not have high-priced lobbyists and \$500-an-hour attorneys working for them. Many of them are working individuals who are simply committed to the values and ideals the flag represents. These hard-working individuals have devoted their time and energy fighting for the right to protect these values.

The Citizens' Flag Alliance has kept an eye on the news throughout the country to watch for reports of flag desecration. But with over 1,450 newspapers in this country it is no small feat to maintain a comprehensive list. Despite the difficulties in tracking these occurrences, the information that the Citizens' Flag Alliance has gathered appears to counter my colleagues' suggestion that there were not many incidents of flag desecration at all.

Since the Citizens' Flag Alliance began keeping count in 1994, there have been over 130 recorded incidents of flag desecration. In small rural areas as well as cities like Cincinnati, OH and Washington, DC, some of these people have defiled the very meaning of the flag by desecrating it, and, in many of those cases, more than one flag was desecrated.

For example, 10 flags were vandalized at the American Legion building on the Veterans of Foreign Wars post in New Hampshire just a few months ago. And, just last week in New York, there was an incident in which seven flags displayed on citizens' private property were desecrated and burned.

These reported occurrences of flag desecration are simply the tip of the iceberg. Besides the difficulties in monitoring the news for flag desecration incidents, there are many other acts of flag desecration that go unreported either because citizens know that the individual responsible cannot be prosecuted thanks to the Supreme Court

decisions or because the media just plain doesn't care.

I heard the other day that protesters recently desecrated an American flag at the funeral of one of our fallen soldiers at Arlington Cemetery. This is just in the last few weeks. I have yet to see this reported by the press.

The bottom line is that, while this may not be a common offense, it is an ongoing and perpetual offense against common decency. Like I said, one flag desecration is enough for the majority of people in this country, let alone hundreds of them.

Now, I would add that these counts miss the point. No matter how many incidents of flag desecration, the American people, through their representatives, should be allowed to pass judgment on this behavior. The courts, including the Supreme Court, used to understand this. They used to respect the considered judgment of the people's representatives. They understood that the desecration of this unique symbol, our symbol, the flag, had a unique impact on the communities that suffer through these events. The opponents of this constitutional amendment can only offer an admonition to grin and bear it, suggesting that we should all be bigger people and not worry about those desecrated flags.

I do not think my colleagues appreciate the harm done to these communities when flags are desecrated on our Independence Day, on Memorial Day, or on our Veterans Day.

The American people do. The American people understand that even one such event is one too many.

Consider these accounts and tell me these communities have not suffered. Let me refer to this chart. This is from the Las Vegas Review Journal. It is entitled: "Misdemeanor Filed in Flag Burning in Las Vegas," dated September 14, 2004.

[Stephen Drew] Hampton burned a U.S. flag during a tribute to the victims of the Sept. 11, 2001 terrorist attacks . . . Hampton set fire to a U.S. flag and waved it around before he was ushered out of the event by Las Vegas police and city marshals. Hampton also burned a U.S. flag last year on Sept. 11 in front of the New York-New York Hotel & Casino.

We were not even talking about the flag amendment then. This is simply the way some people handle our flag. This individual is by no means the only example.

The fact is that this is not a partisan issue. The American people want this amendment. This is an issue supported by Democrats, Independents, and Republicans nationwide. This amendment is supported in a bipartisan manner by both Democrats and Republicans in the Senate.

The problem is not that there is a rash of flag burning, although by anybody's count you would have to say there certainly is. This is not what this resolution is meant to address. Suggesting that we could only legislate to protect against widespread flag desecration is a red herring. What we are

doing here is restoring the power of the American people over their own communities.

Let's be honest about it. This amendment is a very simple amendment. It says nothing about banning flag desecration. It does nothing to the First Amendment. It simply says we are going to return this issue back to the Congress where it should have been to begin with. This amendment says these words:

The Congress shall have power to prohibit the physical desecration of the flag of the United States.

Does that mean the Congress has to prohibit desecration of the flag? No. Will the Congress? I hope so. But the Congress does not have to. Even if, assuming this amendment is passed by this body and ratified by 38 States, Congress decides to bring forth a statute, it would still have to have a supermajority vote in the Senate because of those who would be opposed to it, who would filibuster it, and who would require us to invoke cloture. Therefore, it would only pass after the whole Congress has spent a considerable amount of time figuring out how best to define flag desecration.

Mr. President, I notice the distinguished Senator from Florida is on the floor and would like to make some remarks, so I will relinquish the floor at this time.

The PRESIDING OFFICER. The Senator from Florida.

Mr. MARTINEZ. Mr. President, it is a real honor to follow the Senator from Utah on an issue of constitutionality, where I know he has had a great impact in the life of our Nation through the distinguished history he has had as a Senator. I know from his many years of serving in the Judiciary Committee that he is one who jealously guards and understands the importance and the meaning of our Constitution.

Mr. President, I wish to speak on this issue of the amendment to protect the flag of the United States, and I wish to begin by speaking about it in a slightly different angle, as someone who, as a young boy in school—I think it was when I reached the fifth grade—was charged with the responsibility of raising the flag in the morning and then bringing it down and protecting it and moving it into a safe place for the evening, until the next school day. I did that for the entire school year.

It was with great reverence and ceremony that this took place. I was, I remember, empowered with this responsibility as a young boy, which was one of the first I had, and I took it very seriously. The interesting thing is, it was in another place, in another land, and it was another flag. It was not the flag we honor and revere today, but it was the flag of the country of my birth, Cuba.

But what I noticed then and came to notice here is that people place great importance in symbols of national unity. No matter what country or where we are, there are very special

symbols that from time to time touch a cord within the nation.

No greater evidence of the importance of this symbol can be given than through the history of our country, the stories we have heard and come to know of great heroism in battle, such as that of a soldier, perhaps at great risk to his own life, who would go to save the flag, go to save the colors—the symbol of the Nation he was fighting for and representing. And many soldiers in the history of our Nation have done just that.

So it seems almost odd there should be a heated debate. I understand the reason for the debate. It is rooted in the principles of constitutional freedom. It is rooted in the desire to honor those first 10 amendments to the Constitution, which are really what we call the Bill of Rights and the right of free speech.

But I do recall, early in law school, studying constitutional law, learning that all rights enshrined in the Constitution have certain limits within them, that they all have certain boundaries, that there is no such thing as unlimited rights. Although we treasure and value our right of free speech, I do believe it is important we understand there are some things that ought to be protected.

We protect our national monuments, not just because they are pieces of property that are beautiful and what they represent, but it is really more about the symbol of what they are. The national monuments are protected because they are a symbol of something special in our Nation, and it might be a person, it might be a historical moment in time.

Likewise, this very special symbol of our Nation, our flag, is one I believe we should also protect. It is protected in a simple way. It is about the balance of power within our Nation. It is about the difference between those things which are reserved for the judicial branch and others which are placed in the hands of the legislative branch.

What the Congress seeks to do in proposing this amendment to the American people, in placing it in a place where it can now enshrine forever what was attempted to be done legislatively a number of times, which the courts have chosen to strike down, is to say the legislative branch of Government, that branch closest to the people, elected by the people, shall have the right and the power to prohibit the physical desecration of the flag of the United States. That is what the article would say:

The Congress shall have power to prohibit the physical desecration of the flag of the United States.

When I was young, another life experience, now being shared by my youngest son, was being a Boy Scout. We see Boy Scouts through the halls of our Congress, visiting here, seeing our sacred monuments, seeing our places where this Republic has been a beacon of hope, the "shining city on a hill" to

many people around the world. When they come and relish what they see, they come with a certain pride. They have learned also, as young boys, to protect the flag, to defend the flag, to honor the flag, and to treat it with that very special respect which is expected for something as important as a symbol of national unity.

So I am an encouraged supporter of this amendment because I believe it is important that as our Nation goes forward we always respect and honor the opportunity and the right of those who disagree with the policies of our Government to freely express themselves, to have no place where they cannot speak. I understand the meaning of freedom, the meaning of the right of free speech. However, I do also understand the very special nature of what the flag represents. In that situation, I believe there are many opportunities available to those who wish to protest, to those who wish to express a point of view different from the Government, that can be expressed in ways that do not affront, that do not offend, and do not destroy that very important symbol of national unity which we have made our flag and which our flag has been.

So I am proud today to support this amendment. I believe it is important that it be a constitutional amendment because we know that past efforts to legislatively fix the problem—to legislatively say to all that this symbol of national unity is so important that we deem it important enough to protect in a very special way—have been frustrated by the inability of the courts to agree with a clear direction the legislative branch has imposed on this. So then it is upon us to allow the people of this country to vote on this issue and to allow the various State legislative bodies to move on this issue and to seek to preserve for evermore this symbol of national unity.

This amendment seeks to prevent the physical abuse of a symbol that has served our country in many valuable ways through its history. It does not do so by restricting anyone's speech but by addressing their physical conduct. We are a free and vibrant people, and we owe that to those who have gone before us, and to those who serve us now, in protecting our national interests. Desecrating the flag does nothing to celebrate or enhance our expressive freedoms, while it clearly dishonors those who have seen the flag as a basis for their service and sacrifice.

So I strongly urge my colleagues to support this amendment and protect the most prominent and visible symbol of the freedom that America represents to the world.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FEINGOLD. Mr. President, I strongly oppose S.J. Res. 12. Make no mistake, we are talking here today about modifying the Constitution of the United States to permit the Government to criminalize conduct that all of us find offensive and wrong, but that is protected by the first amendment. This amendment would, for the first time, amend the Bill of Rights. I cannot support this course.

Let me make one thing clear at the outset. Not a single Senator who opposes the proposed constitutional amendment, as I do, supports burning or otherwise showing disrespect to the flag. Not a single one. None of us think it is "OK" to burn the flag. None of us view the flag as "just a piece of cloth." On those rare occasions when some malcontent defiles or burns our flag, I join everyone in this Chamber in condemning that action.

But we must also defend the right of all Americans to express their views about their Government, however hateful or spiteful or disrespectful those views may be, without fear of their Government putting them in jail for those views. America is not simply a Nation of symbols, it is a Nation of principles. And the most important principle of all, the principle that has made this country a beacon of hope and inspiration for oppressed peoples throughout the world, is the right of free expression. This amendment threatens that right, so I must oppose it.

We have heard at various times over the years that this amendment has been debated that permitting protestors to burn the American flag sends the wrong message to our children about patriotism and respect for our country. I couldn't disagree more with that argument. We can send no better, no stronger, no more meaningful message to our children about the principles and the values of this country than if we oppose efforts to undermine freedom of expression, even expression that is undeniably offensive. When we uphold first amendment freedoms despite the efforts of misguided and despicable people who want to provoke our wrath, we explain what America is really about. Our country and our people are far too strong to be threatened by those who burn the flag. That is a lesson we should proudly teach our children.

Amending the first amendment so we can bring the full reach of the criminal law and the power of the state down on political dissenters will only encourage more people who want to grandstand their dissent and imagine themselves "martyrs for the cause." Indeed, we all know what will happen the minute this amendment goes into force—more flag burnings and other outrageous acts of disrespect of the flag, not fewer. Will the amendment make these acts any more despicable than they are now? Certainly not. Will it make us love the

flag any more than we do today? Absolutely not.

It has been almost exactly 17 years since the Supreme Court ruled that flag burning is a form of political speech protected by the first amendment. Proposals to amend the Constitution arose almost immediately and have continued unabated. But while the interest of politicians in this course of action seems as strong as ever, public interest in it seems to be waning. Opinion polls show support for the amendment has fallen. Amending the Constitution to prohibit flag desecration is just not the foremost thing on the minds of the American people. Perhaps that is because it is long since clear that our Republic can survive quite well without this amendment. Nearly a generation has passed since the *Texas v. Johnson* decision, and our Nation is still standing strong. That alone shows that this amendment is a huge overreaction and an entirely unnecessary step.

The last time that the full Senate voted on, and rejected, this constitutional amendment was in the year 2000. I think it is fair to say that patriotism since then has not only survived without this amendment, it has flourished, and in very difficult times, much more difficult than the country faced in 1989, when the Supreme Court struck down flag desecration statutes, or in 1995 when I first voted on the amendment in the Judiciary Committee.

Indeed, outward displays of patriotism are greater today than they were in 2000. We all know why that is. Our country was viciously attacked on September 11, 2001, and America responded.

We didn't need a constitutional amendment to teach Americans how to love their country. They showed us how to do it by entering burning buildings to save their fellow citizens who were in danger, by standing in line for hours to give blood, by driving hundreds of miles to search through the rubble for survivors and to help in cleanup efforts, by praying in their houses of worship for the victims of the attacks and their families.

September 11 inspired our citizens to perform some of the most selfless acts of bravery and patriotism we have seen in our entire history. No constitutional amendment could ever match those acts as a demonstration of patriotism, or create similar acts in the future. We do not need a constitutional amendment to teach Americans how to love their country or how to defend it from our enemies.

I know that many veterans fervently support this amendment. I deeply respect their opinions and their right to urge the Congress to pass it. But I also want the record to be clear that many of those who have served our country in battle oppose the amendment as well. In 1999, a number of veterans formed a group called the Veterans Defending the Bill of Rights. These veterans, who served our country in five

different wars, strongly believe it is wrong to pass an amendment to protect the flag that takes away the freedom the flag represents. I'd like to share with my colleagues the views of these brave veterans, who, in my opinion, represent the very best of the American spirit.

Let me start with the words of a veteran of our current conflict in Iraq. SPC Eric Eliason of Englewood, CO, served as an infantryman in the Army for 3 years, including 1 year overseas as part of Operation Iraqi Freedom. He said:

We volunteered to go to war to protect the freedoms in this country, not watch them be taken away. . . . I consider myself an independent-minded conservative, and believe that creating unnecessary amendments to the U.S. Constitution is a betrayal of conservative principles.

Another veteran, Brady Bustany of West Hollywood, CA, who served in the Air Force during the gulf war, put it very simply. He said,

My military service was not about protecting the flag; it was about protecting the freedoms behind it. The flag amendment curtails free speech and expression in a way that should frighten us all.

A veteran of the Korean war, Jack Heyman of Fort Myers Beach, FL, whose great grandfather fought in the Civil War, whose father served in World War I, and whose son served in Vietnam, explained his opposition to the amendment this way:

I know of no American veteran who put his or her life on the line to protect the sanctity of the flag. That was not why we fulfilled our patriotic duty. We did so and still do to protect our country and our way of life and to ensure that our children enjoy the same freedoms for which we fought.

The leader of Veterans Defending the Bill of Rights is Professor Gary May of the University of Southern Indiana. Professor May, whose father, father-in-law, grandfather, and brother also served our country in the Armed Forces, lost both legs in the Vietnam War on April 12, 1968, over 38 years ago. He opposes this amendment, and because of what he has sacrificed for his country, he speaks more eloquently than I could ever hope to about the danger of this amendment. Professor May testified at the last Senate hearing held on the flag amendment, which, by the way, was held more than 2 years ago, on March 10, 2004. Professor May said:

Freedom is what makes the United States of America strong and great, and freedom, including the right to dissent, is what has kept our democracy going for more than 200 years. And it is freedom that will continue to keep it strong for my children and the children of all the people like my father, late father in law, grandfather, brother, me, and others like us who served honorably and proudly for freedom.

The pride and honor we feel is not in the flag per se. It is in the principles for which it stands and the people who have defended them. My pride and admiration is in our country, its people and its fundamental principles. I am grateful for the many heroes of our country—and especially those in my

family. All the sacrifices of those who went before me would be for naught, if an amendment were added to the Constitution that cut back on our First Amendment rights for the first time in the history of our great Nation.

Professor May also provided in his statement excerpts from letters he has received from other veterans who oppose the amendment.

One veteran, James Lubbock of St. Louis, MO, who served in World War II and has two sons who served in the Vietnam war, said:

Let's not alter the Bill of Rights to save the flag. We should respect the flag, but we should all cherish the Bill of Rights much, much more.

These kinds of expressions move me deeply. The service of our troops shows the awesome power of the American ideal. The willingness of our young people to serve this country, to risk their lives, and endure unimaginable hardships on our behalf is not to be taken lightly. I believe that this remarkable spirit is inspired and nurtured by the principles on which this country was founded, by our devotion to the Constitution and the rule of law. We should not trifle with those principles. Too much is at stake. We know that now more than ever.

Despite the expected close vote, it is clear that this is a political exercise in an election year. We will spend several days of precious floor time, as the legislative session winds down, debating a measure that would undermine the Constitution while affecting only a handful of miscreants each year.

As we do so, humanitarian catastrophes continue to unfold around the world, posing a direct threat to international peace and stability and affecting the lives of millions upon millions of people.

I sincerely hope we will remember what this debate today is really about—not whether flag burning is a good idea, not whether we love and respect our flag, not whether patriotism is worth encouraging and celebrating, but whether the threat to our country from those who burn the flag is so great—is so great—that we must sacrifice the power and the majesty of the first amendment to the Constitution in order to prosecute them.

In 1999—it just so happens the Presiding Officer is the son of this man—the late Senator John Chafee, one of this country's great war heroes at Guadalcanal and in the Korean war, testified before the Judiciary Committee against this amendment. He said:

[W]e cannot mandate respect and pride in the flag. In fact . . . taking steps to require citizens to respect the flag, sullies its significance and symbolism.

Senator Chafee's words still echo in my mind. They should serve as a caution to all of us who have the responsibility to vote on this amendment. What kind of symbol of freedom and liberty will our flag be if it has to be protected from misguided protesters by a constitutional amendment?

In concluding, Mr. President, I pay tribute to you and your father. I will vote to defend our Constitution against this ill-advised effort to amend it. I urge my colleagues to vote for liberty and freedom and for the first amendment by voting no on this constitutional amendment.

I ask unanimous consent that several letters be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AMERICAN BAR ASSOCIATION,
GOVERNMENTAL AFFAIRS OFFICE,
Washington, DC, June 9, 2006.

Hon. PATRICK LEAHY,
U.S. Senate, Russell Senate Office Building,
Washington, DC.

DEAR SENATOR LEAHY: On behalf of the American Bar Association, I write to urge you to vote against S.J. Res. 12, the proposed amendment to the U.S. Constitution that would allow Congress to prohibit the physical desecration of the flag of the United States.

Few things are more offensive to most Americans than the desecration of our flag. But, as important as the flag is to all of us, we must never protect it at the expense of the constitutionally protected freedoms it symbolizes. One of our most precious rights is the right to express our dissatisfaction with our government through peaceful words or conduct, both of which are forms of political speech and protected under the First Amendment. S.J. Res. 12 would enshrine a restriction on our fundamental right to free speech in the very document that protects our individual liberties. For the first time in our Nation's history a fundamental right would be denied for future generations.

The Bill of Rights has remained honored and intact, even during great times of conflict and stress for our nation, for over 200 years. As James Madison once stated, amending the Constitution should be reserved for "great and extraordinary occasions." Infrequent incidents of flag desecration do not warrant undermining the freedom of speech guaranteed under the First Amendment. If we were to desecrate our Constitution to protect the flag's cloth from insult, we would do it great disservice to both.

All through human history, tyrannies have tried to enforce obedience by prohibiting disrespect for the symbols of their power. The American flag commands respect and love because of our country's adherence to its values and promise of freedom, not because of fiat and criminal law. America is not so fragile and our citizens' patriotism is not so superficial that they must be upheld by the mandate of a constitutional amendment to protect the flag.

We urge you to defend and preserve our cherished constitutional freedoms by rejecting S.J. Res. 12.

Sincerely,

MICHAEL S. GRECO.

VETERANS FOR COMMON SENSE,
Washington, DC, July 14, 2005.
Re Oppose the Flag Desecration Constitutional Amendment.

DEAR SENATOR: We, the undersigned members of Veterans for Common Sense, write to urge you to oppose S.J. Res. 12, the proposed constitutional amendment to prohibit "desecration" of the flag. This proposed amendment is an attack on liberty, and a disturbing distraction from the real concerns of our nation's veterans.

Veterans for Common Sense (VCS) was founded on the principle that in an age when

the majority of public servants have never served in uniform, the perspective of war veterans must play a key role in the public debate over national security issues in order to preserve the liberty veterans have fought and died to protect. VCS was formed in 2002 by war veterans who believe that we, the people of the United States of America, are most secure when our country is strong and responsibly engaged with the world. Three years later, our organization has over 12,000 members throughout the United States. Central to our mission is supporting United States servicemen and women, veterans and their families, and preserving American civil liberties as guaranteed in the U.S. Constitution and its amendments.

The United States is faced with a number of pressing concerns related to national security and the quality of life of veterans. We believe that the United States government and military has a responsibility to maintain and continue its work in Iraq so that the country comes out of this war as a stable, secure and sovereign nation where its people have the best opportunity for a decent and free life. The government also has a responsibility to ensure that United States servicemen and women come home safe.

Out of the 360,000 discharged veterans from Operation Iraqi Freedom and Operation Enduring Freedom, nearly one in four have already visited the Veterans Administration for physical injuries or mental health counseling. Our government has a duty and a responsibility to address both the traditional and nontraditional effects of war, including battlefield injuries, post-traumatic stress, and diseases resulting from vaccines and toxic exposures.

These concerns should be on the top of the congressional agenda this session. But instead of devoting its time and resources to resolving these urgent challenges, Congress apparently chooses to consider amending the Constitution to prohibit a form of nonviolent expression. We are dismayed by this choice.

We urge Congress to preserve American civil liberties as guaranteed in the United States Constitution and its amendments. When it comes to the measure under consideration, we believe that the supposed threat of a few incidents of flag burning does not justify the first ever amendment to the First Amendment. The ability to express non-violent dissent to government policy is central to the American way of life, and we are loathe to amend away this fundamental liberty.

As veterans, we are indeed offended by those who burn or defile the flag. The flag is a cherished symbol of the freedoms we fought to defend, and we honor it as such. But we must not attempt to protect this symbol at a cost to the freedoms it represents. The Constitution of the United States has never been successfully amended to restrict liberty. To do so now would betray the promise and ideal of America.

The proposed constitutional amendment to ban "desecration" of the flag threatens the civil liberties of Americans. Further, it distracts from the real world concerns of our active duty military personnel and veterans. Congress should not be in the business of undermining freedom of speech. During this time of war, we urge you to put this unnecessary and dangerous constitutional amendment aside, and instead focus on protecting our national security, insuring our servicemembers in harm's way have what they need to accomplish the mission, and that when they return home they get the best possible care. Again, please oppose S.J. Res. 12. If passed, it will undermine the Con-

stitution that we swore to support and defend.

Sincerely,

BG (Ret.) EVELYN FOOTE,
Army, Accokeek, MD and over 1300 veterans.

THE AMERICAN JEWISH COMMITTEE,
OFFICE OF GOVERNMENT AND
INTERNATIONAL AFFAIRS,

Washington, DC, June 22, 2006.

Re: Flag Desecration Amendment (S.J. Res. 12)

DEAR SENATOR, On behalf of the American Jewish Committee, the nation's oldest human relations organization with over 150,000 members and supporters represented by 33 regional offices nationwide, I urge you to oppose the Flag Desecration Amendment (S.J. Res. 12). This amendment to the United States Constitution would authorize Congress to prohibit the physical desecration of the U.S. flag.

The Flag Desecration Amendment would encroach upon Americans' First Amendment rights. While AJC would be appalled by the burning of the flag for political purposes, the amendment would undermine the very values of freedom of expression and peaceful dissent that our flag represents. The House of Representatives already passed its version or The Flag Desecration Amendment one year ago. If adopted by the Senate, this legislation would mark the first time Congress has amended our founding charter to diminish the precious freedoms protected by the Bill of Rights.

We therefore urge you to protect the First Amendment's guarantee of freedom of expression by opposing S.J. Res. 12.

Thank you for considering our view on this matter.

Respectfully,

RICHARD T. FOLTIN,
Legislative Director and Counsel.

NATIONAL COUNCIL OF
JEWISH WOMEN,
June 23, 2006.

DEAR SENATOR: I am writing on behalf of the 90,000 members and supporters of the National Council of Jewish Women (NCJW) in opposition to the proposed amendment to the Constitution banning flag desecration (S.J. Res. 12).

NCJW is a volunteer organization, inspired by Jewish values, that works to improve the quality of life for women, children, and families and to ensure individual rights and freedoms for all. As such, we feel amending the Constitution in this way would threaten healthy civic debate, personal freedom of expression, and our fundamental democratic values.

As a symbol of our nation, the United States' flag represents our unique democracy and basic freedoms. The burning of the American flag constitutes dissenting expressive conduct, a right upheld by the US Supreme Court in *Texas v. Johnson* (1989). This Supreme Court precedent and our nation's history teach us that we must not protect this symbol at the expense of weakening the rights it represents.

As a senator, you are entrusted with protecting the rights and liberties of all Americans. I ask you to reaffirm your commitment to protecting these rights by opposing this egregious amendment.

Sincerely,

PHYLLIS SNYDER,
NCJW President.

Mr. FEINGOLD. Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CARPER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CARPER. Mr. President, like each of our colleagues in the Senate, I have a deep and abiding reverence for our flag.

As an 11-year-old Boy Scout, I learned flag etiquette and how we are supposed to show our respect for the flag. Later, I attended Ohio State University as a Navy ROTC midshipman and upon graduation took an oath to defend our country and its Constitution against all enemies both foreign and domestic.

I went on to serve our Nation as a naval flight officer for 23 years of Active and Reserve duty during the Vietnam war and until the end of the Cold War, much of it as a Navy P-3 mission commander.

We fly "Old Glory" on the front porch of our home throughout the year. We display it proudly in my Senate offices in Georgetown, Dover, and Wilmington, DE, as well as right here in Washington, DC.

Over the past 24 years, I have kicked off hundreds of townhall meetings by inviting attendees to stand and join me in pledging allegiance to our flag.

I wear an American flag lapel pin to work every day, and the American flag is even displayed on the Chrysler minivan I drive all over my little State.

I know it may sound old-fashioned or even corny to some, but I still get a lump in my throat more often than not when I pledge allegiance to our flag or sing our national anthem. In short, I love our flag and all of the good that it symbolizes about America.

In fact, I probably love our flag more today than all the days I have lived on this Earth. That is 59. But as much as I love our flag, I love our Constitution even more.

The U.S. Constitution is the foundation of the longest living experiment in democracy in the history of the world—America. Although written by man, I believe our Constitution was divinely inspired.

Among the rights that it guarantees us as Americans, none is more cherished than our right to freely express our beliefs. As much as we may disagree with the views of others, our Constitution seeks to guarantee that each of us has the right to convey our thoughts and views, however outrageous the rest of us may find them to be.

Our Constitution has been amended only 17 times since 1791 and just 6 times in my lifetime.

We have amended the Constitution to protect our freedom of speech, to worship God as we see fit, to protect our right to bear arms, and to ensure the right to a trial by a jury of our peers.

We have amended our Constitution to protect us from unlawful searches of our home and to guarantee our right to

assemble to present our grievances to those who serve us.

Constitutional amendments have abolished slavery, provided women and 18-year-old Americans with the right to vote, and limited our Presidents to serving just two terms in office.

The original Framers of our Constitution made it possible to amend the Constitution, but they did not make it easy. Our Founding Fathers believed they largely "got it right" the first time. History has demonstrated that they did.

When I served in Southeast Asia during the Vietnam war, flag burning was not uncommon. I was never in the presence of anyone who desecrated or destroyed our flag in protests then. It is hard to know for sure how I would have reacted, but it would not have been pretty.

Having said that, it has been a long time since I ever saw anyone burning or otherwise seeking to desecrate or destroy an American flag, and I am not the only one who feels that way either.

Former Secretary of State Colin Powell wrote several years ago:

If someone destroys or desecrates a flag that is the property of someone else, that is a prosecutable crime. If someone is foolish enough to desecrate a flag that is their own property, do we really want to amend the Constitution to hammer a handful of miscreants?

In 1998, retired Green Beret Marvin Stenhammar testified before the Senate Judiciary Committee and addressed the two same questions above with this statement:

As a true conservative, I ask you: When did it become conservative to recommend several changes to the Constitution? My brand of conservatism does not include this doctrine . . . I feel you—

"You" being the Congress—

have better things to do with your time and our tax dollars than changing the Constitution for something that rarely occurs and is typically done by immature idiots.

I have given this issue a lot of thought over the past 30 years. I have searched my heart, and I have concluded that once we let our passions subside, Colin Powell and Marvin Stenhammar have spoken the truth.

Flag burning or desecration, as we think of it, rarely does occur in this country today. In fact, last night, I was watching the news on television with my youngest son. The footage the networks were showing either dated back to the Vietnam war or they were images of foreigners burning a flag in Iraq or some other foreign countries.

I think that begs the question: Do we really need to amend the Constitution in an effort to eliminate a form of protest that almost never happens in America today? I am not convinced that we do.

Come to think of it, I don't recall a time in my life when there was a greater reverence for the American flag than there is today in our country.

I was reminded of that fact just last summer when I marched in Fourth of

July parades throughout Delaware in places such as Hockessin, Smyrna, Laurel, and Bethany Beach and saw literally thousands of people of all ages waving, wearing, or displaying the stars and stripes.

All across America today, we see our flag proudly displayed on millions of homes, office buildings, factories, schools, stadiums, construction sites, bridges, and on the vehicles we drive.

A spirit of patriotism swept across our country since 9/11 in a way I have never witnessed in my life, and it has never fully subsided. That spirit is a source of comfort and inspiration to me, as I believe it is to millions of Americans everywhere.

The "miscreants" or the "idiots" who used to burn flags here did so to bring attention to their causes. They wanted to inflame passions in order to garner broader media coverage for those causes.

A Washington Post editorial of June 27, 2005—1 year ago today—said it better than I could. It said:

When was the last time you saw someone burning a flag? If the answer is never, that's because it hardly ever happens. In fact, one of the few certain consequences of passing this amendment would be to make flag burning a more fashionable form of protest.

Given human nature today, the Post is probably right.

Another problem with the amendment is that just as beauty is in the eye of the beholder, so is flag desecration in several respects.

Most Americans would agree with us that burning an American flag in protest constitutes desecration, but how about a person covered with suntan lotion and perspiration lying on the sand on a hot sunny day at Bethany Beach or any beach for hours on an American flag beach towel? Or how about wearing an American flag swimsuit? What if a person wears American flag underwear, a neckerchief, or a sweatband of the stars and stripes?

What if they use their American flag neckerchief to wipe the dirt off their face or maybe even blow their nose on it? Do we really want to cause law enforcement officers, along with judges and prosecutors, to wrestle with questions such as these or do we want them fighting illegal drug trafficking, unlawful immigration, child abuse, assaults, rapes, and murders, and other serious crimes that are far more commonplace?

Let me suggest to my colleagues today not all behavior that dishonors our flag involves the physical desecration. I believe we desecrate our flag and what it symbolizes when we send American troops off to war without the body armor that they and their Humvees are supposed to have. I believe that we desecrate our flag and what it symbolizes if we don't provide for the needs of our soldiers when they come up with post-traumatic stress disorder, or without an arm, a leg, or their eyesight.

I believe we desecrate what our flag symbolizes when we discourage hun-

dreds of thousands of Americans from voting by knowingly misallocating voting machines in some parts of America, causing people to give up after waiting for hours in line to cast their ballots.

I believe we desecrate what our flag symbolizes when we intimidate people whose religious beliefs are different from our own and try to compel them to worship God as we see fit. I believe that a handful of corporate CEOs desecrate what the American flag symbolizes when they loot the companies they lead and leave employees, pensioners, shareholders, and the rest of us holding the bag.

I believe we desecrate this beloved symbol of our country when we run up massive national debt that our children and our grandchildren will spend the rest of their lives trying to dig out from under.

I believe we desecrate what our flag symbolizes when some politicians who sought three deferments during an earlier war question the patriotism of those of us who served three tours of duty there or left three limbs on the battlefield of that war.

And I believe, my friends, that we desecrate all of the good that our flag symbolizes about America when we call on other nations to abide by the Geneva Conventions in providing humane treatment of the war prisoners they hold while we do not.

Mr. President, how much time do I have remaining, please?

The PRESIDING OFFICER. Seventeen seconds.

Mr. CARPER. Mr. President, I yield back the remainder of my time, and I will continue the rest of my speech at a later time today.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, is there an order in effect for a time agreement? How much time do I have, in other words?

The PRESIDING OFFICER. The majority controls the time until 12:30.

Mr. CORNYN. Mr. President, I rise to address the resolution that is before us today and to speak in favor of its adoption. But before I do that, I think it is important first to read what the resolution says, because I think what we are actually going to be voting on has been misconstrued and, to some extent, inadvertently misrepresented. Also, during the course of my comments, I would like to address those who say that protecting Congress's prerogative to pass laws against flag desecration and those who say it is not important and emphatically disagree with them. And to those who say there are other things we can and should be doing, I say, well, we have been very busy doing a lot of very important things, but I certainly believe we have enough time in our crowded schedule to address this important issue as well.

There are also those who say amending the Constitution is simply something we should not do, even though we

have done so 27 times during the course of our Nation's history, and even though the 27th amendment to the United States Constitution provides that Congress can't increase its salary without having an intervening election. If we can amend the Constitution for that, which I agree is an important provision, we can certainly reinstate Congress's authority to pass laws protecting our national emblems and our national symbols such as the United States flag.

There are also those who try to get off—and again, I know people of good faith have serious disagreements. I don't mean to disparage the good faith of those who say this, but I would challenge those who say we can pass a statute and avoid having to pass a constitutional amendment. All I would say to that is: Been there. Done that. Doesn't work. The Supreme Court held that subsequent statutory provision unconstitutional, just like it did in the Texas case in 1989, the Texas law that prohibited desecration of the flag.

First of all, let me read the constitutional amendment being proposed, because there are some who say we are being asked to ban flag burning. In fact, this is a restoration of the authority under the Constitution to Congress to pass such laws as it deems appropriate, and we can talk about what the details of those bills would be later on, once the amendment is adopted. But it says, simply:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States.

The article says simply this:

The Congress shall have the power to prohibit the physical desecration of the flag of the United States.

As I said, this constitutional amendment doesn't actually make it a criminal act to desecrate the flag; it doesn't say what the penalties will be. What this constitutional amendment does is reinstate Congress's historical authority to protect the flag against desecration and leave for a later date what exactly that statute, that bill, would look like.

The reason I feel so strongly about this provision is because of the unique nature of our national symbol. The American flag is a monument, a symbol of our freedom, our country, and our way of life. Why in the world would we refuse to protect it against desecration?

As a former President of the United States has noted:

We identify the flag with almost everything we hold dear on Earth. It represents our peace and security, our civil and political liberty, our freedom of religious worship, our family, our friends, our home. We see it in the great multitude of blessings of rights and privileges that make up our country.

Another President has said it this way:

Our flag is a proud flag and it stands for liberty and civilization. Where it has once floated, there must be no return to tyranny.

We not only pledge allegiance to the flag each day in the Chamber of the U.S. Senate; children across America recite those words at the beginning of each school day, too. We celebrate Flag Day on June 14 of each year. We pin to our lapels flag pins and paste it to the windows of our cars and trucks. Following 9/11, you could hardly buy a flag, because they were in such demand as a rallying symbol of American patriotism and resolve in the wake of that awful attack, as depicted by this well-remembered picture of first responders in New York erecting the American flag out of the rubble following the deaths of 3,000 innocent Americans.

We insist on special rules of etiquette when a flag is handled. When I was a Boy Scout growing up, that was one of the things you learned. You learned flag etiquette, how to demonstrate respect for this unique symbol of our country, including learning how, when the flag is old and tattered, that special rules of etiquette dictate its disposal.

By displaying the flag, we demonstrate our gratitude to the generations passed who have fought and died for our country. And we remind ourselves of the obligation that we have to preserve our freedom for the generations yet to come and to pass along to our children and grandchildren the blessings of liberty that we have come to enjoy because of the sacrifices of those who have gone before. We drape this emblem over the coffins of those who have died in service to our country, those who have given the last full measure of devotion to keep us and our freedom safe. We proudly fly the flag over our Capitol here in Washington, DC, and at State capitols and public buildings all over our country.

Mr. President, recently I read a book about the most famous picture in the history of photography. This is a picture we are going to put up on this board that all of you will instantly recognize. This is a picture of Marines erecting the American flag on Iwo Jima in World War II, where thousands upon thousands of Marines gave their lives to take this island from the occupiers. The book I read recently is called "Flags of Our Fathers," written by a man named James Bradley; his father was John. John Bradley, the father of the author, stands in the middle of the most reproduced figure in the history of photography. Only days before this photo was taken, John Bradley, a Navy corpsman, had braved enemy mortar and machine gun fire to administer first aid to a wounded Marine and then dragged him to safety. For this act of heroism John Bradley would receive the Navy Cross, an award second only to the Congressional Medal of Honor.

One of the amazing things about this book, "Flags of Our Fathers," about

this photograph and about John Bradley's service to his country as a Marine Corpsman and the service of others of these Marines who erected this flag on Iwo Jima in World War II, is that John Bradley, like so many of the Greatest Generation, never spoke of this historic moment or really much of his military service to his family or friends.

This reminds me a lot of my dad, who was a B-17 pilot in World War II who, on his 13th mission helping to knock out part of Hitler's war machine in Nazi Germany, was shot down and spent 4 months in a German prison camp. And like John Bradley, my dad never talked much about his military service. But James Bradley, John Bradley's son, discovered three boxes of artifacts his father had saved about Iwo Jima after his death, which launched him into a quest to find out a little bit more about his father's past and the past of the five other flag-raisers depicted in this picture.

This book explores the lives of all of these flag-raisers, showing how in times of national crisis ordinary Americans have found within themselves an uncommon courage and a capacity to attempt, and achieve, the impossible.

Indeed, that is one of the things that makes the American flag unique. What becomes of a country that has no special symbols; that somehow, over the passage of time, has deemed itself too sophisticated, too intelligent, too cynical to be choked by emotion when our flag is raised or when the pledge is spoken or when our National Anthem is sung?

During the Civil War, as James McPherson, a internationally known historian of that period has noted:

The most meaningful symbol of regimental pride were the colors—the regimental and national flags, which bonded the men's loyalties to unit, State, and Nation.

He records one combatant as saying:

When the American flag appeared above the battle smoke on the enemy works, it is impossible to describe the feelings one experiences at such a moment. God, country, love, home, pride, conscious strength and power, all crowd your swelling breast. Proud, proud as a man can feel over this victory to our arms. If it were a man's privilege to die when he wished, he would die at that moment.

These are not my words; these are the words of those who, in the service of their country, gained inspiration and purpose from this symbol that is a unique symbol, unlike any other we have in this country.

But ultimately, there are those on the floor of the U.S. Senate who ask: Well, is this really important enough to amend the United States Constitution? To those I would say, the question is not whether the Constitution should be amended; it already has been by judicial decree. The question then remains, who gets the final word? Five Justices on the United States Supreme Court or we, the people?

Not important? I disagree. This, I believe, is the ultimate test of our form

of government, based as it is upon consent of the government. Our Founding Fathers recognized that our Constitution might need to be amended over time and thus article V of the Constitution creates a difficult but nevertheless a way forward to amend the Constitution when the American people see fit.

Of course, this process will not stop upon this body's passage of this amendment. Assuming we are able to get the two-thirds vote requirement in the Senate and in the House, then it will go to the States, where three-quarters of the States must ratify the amendment for it to become the 28th amendment to the United States Constitution.

I believe, to quote the Declaration of Independence, that the powers of the Federal Government emanate from "the consent of the governed." In other words, I believe that we as a nation do not have to accept as final the judgment of five Judges who, in 1989, in the *Texas v. Johnson* case, held the Texas flag desecration law unconstitutional.

The amazing thing about this debate is I do not think there are very many people who recognize that before 1989, when the U.S. Supreme Court struck down the Texas flag desecration statute, 48 States, including the District of Columbia, had laws criminalizing flag desecration—48 States. But, lo and behold, 200 years after its adoption, five Judges decided that the first amendment of the Constitution of the United States, which guarantees free speech, renders all of those 48 flag desecration statutes unconstitutional as being a limitation on free speech. Don't mind the fact that it is really not about speech, it is about behavior. It is not about what you say, it is about what you do. But the Supreme Court, five members of the Court, didn't seem to have too much trouble with that.

Chief Justice Rehnquist, recently departed, in the dissent to that case of *Texas v. Johnson* in 1989 that struck down all 48 flag desecration statutes, wrote:

The American flag, then, throughout more than 200 years of history, has come to be the visible symbol embodying our Nation. It does not represent the views of any particular political party, and it does not represent any particular political philosophy. The flag is not simply another "idea" or "point of view" competing for recognition in the marketplace of ideas. Millions and millions of Americans [Chief Justice Rehnquist said] regard it with an almost mystical reverence, regardless of what sort of social, political or philosophical beliefs they may have. I cannot agree that the first amendment invalidates the act of Congress and the laws of 48 of the 50 States which make criminal the public burning of the flag.

Justice Stevens, not necessarily of the same sort of judicial ideology or bent as Chief Justice Rehnquist, also dissented, and he said:

The flag is more than a proud symbol of the courage, the determination, and the gifts of nature that transformed 13 fledgling Colonies into a world power. It is a symbol of freedom, of equal opportunity, of religious

tolerance, and of good will for the other peoples who share our aspirations. . . . The value of the flag as a symbol cannot be measured.

Justice Stevens concluded:

The case has nothing to do with "disagreeable ideas." It involves disagreeable conduct that, in my opinion, diminishes the value of an important national asset. . . .

And that Johnson, the defendant in that case, was punished only for the means by which he expressed his opinion, not the opinion itself.

I mentioned a moment ago that there are those of our colleagues who in good faith think that we can fix this problem by simply passing another flag desecration statute in the U.S. Congress. I would point out to my colleagues that we have already tried to do that right after the *Texas v. Johnson* case. The U.S. Congress overwhelmingly passed a statute which was struck down by the same five Justices on the U.S. Supreme Court in a case called *United States v. Eichman*.

It is clear that no statute can pass constitutional muster as long as the *Texas v. Johnson* decision is on the books. There are some who would offer an amendment—maybe during the course of this debate—who in good faith think that if they limit the reach of the statute to fighting words, in other words some act that would provoke violence in a public place, that somehow they have fixed the problem. But we are not just talking about provoking people by what is tantamount to fighting words by protecting the flag. We are talking about protecting a valuable national symbol of all of the things our country has come to mean, both to us and to those abroad; and that the good faith of our colleagues notwithstanding, no statute that we might pass could possibly fix the problem of five Judges assuming after 200 years that flag desecration is protected speech, that it violates the first amendment of the Constitution.

We all know as a matter of constitutional law that no statute can fix a constitutional violation. So only a constitutional amendment, passed by Congress and ratified by three-quarters of the States, could possibly fix this problem.

Those who complain and say this is an imaginary problem, that we do not have acts of flag desecration today or why are we talking about this in 2006 if the Supreme Court held this flag desecration statute unconstitutional in 1989, there is a very simple reason we are still talking about it today. It is because we have been working on it under the leadership of Senator ORRIN HATCH and others for 11 years.

I think the first constitutional amendment that was introduced was in 1995, and we have gradually been making progress each year by getting more and more support in the Senate. I hope our colleagues today will meet the challenge and deliver the 67 votes needed in this Chamber in order to move this constitutional amendment along.

To those who say this is an imaginary problem, I will say simply look at the facts. The Citizens Flag Alliance has a Web site in which they demonstrate 17 acts of flag desecration in the United States over the last 2 years. It may be these are not widely reported in the press. I am not sure exactly what the reason is. But there are 17 acts of flag desecration just in the last 2 years. This is not a contrived or imaginary issue.

I remember the ranking member of the Judiciary Committee, the Senator from Vermont, saying he was vehemently against the constitutional amendment because he didn't think we ought to tamper with the Constitution—notwithstanding the Founding Fathers provided article V to give us a means to amend the Constitution when a sufficient number of people in the Congress and across the country see fit. But I think he said something like: If anyone had the temerity to desecrate the flag in his presence, they wouldn't need a statute criminalizing that act. They would have to get past him to get to wherever it was they were going, suggesting that perhaps individuals who were sufficiently motivated might, through acts of violence, perhaps, dictate justice.

I do not think that is a sufficient answer. This is a real issue. It is not contrived, as demonstrated by the 17 acts of desecration in the last 2 years. It is not a problem we can fix by passing a statute and patting ourselves on the back and saying: Yes, we fixed that problem. This is a problem that calls for a constitutional amendment.

Yes, I know how serious that is. I don't lightly suggest amendments to the Constitution. But I sincerely believe in my heart of hearts this unique symbol of our country and all of our aspirations and dreams—not only for people here but the kinds of aspirations and dreams that are a beacon to those who will come here in the future, and the generations that come here after—I believe it deserves special protection. Thus, I believe we ought to take this opportunity to say yes.

Congress does have a voice in this. Yes, the American people do have a voice in whether the flag is protected. The only way we can do that is by passing this resolution by two-thirds of the Senate and moving this process along and then leaving it up to the people of America, the three-quarters of the States that will have to ratify this before it becomes final. Let them have a word.

I yield the floor.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CORNYN. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. CORNYN. I thank the Chair.

RECESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will stand in recess until 2:15 p.m.

Thereupon, the Senate, at 12:26 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

FLAG DESECRATION AMENDMENT—Continued

The PRESIDING OFFICER. The Senator from Maine—Vermont.

Mr. LEAHY. Mr. President, both are beautiful States. Maine is the largest land area, the largest State in New England. Most people are surprised to know that Vermont is the second largest. We beat out New Hampshire by about 90 square miles—larger than Massachusetts, larger than Connecticut, larger than Rhode Island. Smallest in population, but we take a back seat to no one in our independence.

I am glad to see my friend, the Presiding Officer, the distinguished Senator, and distinguished former Governor.

I commend the senior Senator from Connecticut for his outstanding statement last night and the senior Senator from Illinois, our Assistant Democratic leader, for his cogent observations on this matter. The statement this morning by the Senator from Vermont, a veteran, a man of principle and courage, made me proud to serve with him in representing the people of our great State. I thank the Senator from Wisconsin, the ranking Democrat on the Constitution Subcommittee for his statement, and the Senator from Delaware, another veteran, for his well-chosen words, as well.

This morning we awoke to read the latest example of this administration's incompetence. Because of bureaucratic bungling, widows of those who have served this Nation and sacrificed for all of us have been denied the survivors' benefits to which they should be entitled. A leader of the Gold Star Wives of America, a group of 10,000 military widows, was quoted as saying:

It is shameful that the government and Congress do not deliver the survivor benefits equally to all our widows with the same compassion and precision the military presents the folded flag at the grave.

Eddie Smith is right and we should be ashamed.

This news follows other recent public reports that posttraumatic stress disorders among our veterans are on the rise. Instead of seeking to turn the flag into a partisan political weapon and the Constitution into a billboard for political slogans, for partisan gain, we should be working to fulfill the pressing needs of our veterans and their families. I wish the Senate would use its time to discuss and solve the real

problems that real Americans are facing right now, instead of trying to stir public passions for political ends.

The Republican leadership so rushed this amendment to the floor that there was not a single Senate hearing on it in this Congress. It was marked up in a side room off the Senate Chamber rather than in the regular public hearing room for the Judiciary Committee with very little debate, and it was reported without a committee report. This is the second time in a month that this Senate is rushing to debate a constitutional amendment without following the procedures that ensure thoughtfulness in such an important debate on a proposal to change our fundamental charter and, in this instance, cut back on the Bill of Rights for the first time in our history.

It was noted today in one of the newspapers that the U.S. Senate—the conscience of the country—is expected to spend 4 days debating this amendment—1 for each incident of flag burning that purportedly occurred this year in a Nation of 300 million people. I respectfully suggest that in the less than 10 weeks left to us in session this year, the Senate's resources would be better spent working to improve veterans' health care services, survivors' benefits and protecting veterans' and Americans' privacy. We have just witnessed the largest theft of private information from the Government ever, the loss of information on more than 26.5 million American veterans, including more than 2 million who are in active service, nearly 80 percent of our active-duty force and a large percentage of our National Guard and the Reserve. Why? Because this administration was so incompetent they did not think to lock the door.

This same administration says we need a constitutional amendment to ban flag burning in order to protect our veterans. We are not going to do anything to protect their credit records; we are not going to do anything to protect their privacy. We will leave the door open on that. But we have to watch out for the flag.

Let me quote what a spokeswoman for the American Legion said recently:

Our armed forces personnel have enough on their plates with fighting the global war on terror, let alone having to worry about identity theft while deployed overseas. A spokesman for the VFW said: This confirms the VFW's worst fear from day one—that the loss of data encompasses every single person who did wear the uniform and does wear the uniform today.

What does the Bush-Cheney administration say? If you are over there fighting in Ramallah and your identity has been stolen, don't worry. We have an 800-number you can call and maybe buy some insurance or something to protect your credit. Well, call once you are not getting shot at.

Because of the Bush-Cheney administration's recklessness, our veterans and our active-duty servicemembers are now worried whether their personal information is being sold on the black

market or available to foreign intelligence services or terrorists. That adds up to a heckuva bad job for America's veterans and our men and women in uniform.

Compounding the incompetence was the misguided impulse of the administration to keep everything secret for as long as they could. Three weeks after the theft, it was finally disclosed. Three weeks after that, the administration finally announced that it would do what it should have done from day 1 by making credit reporting available to those affected. And the administration is still fighting paying for its mistakes. It is resisting the efforts by Senators BYRD and MURRAY to provide the money needed to pay for credit monitoring and proposing to take the money from veterans health care or other programs. That is wrong.

Such incompetence at the Bush-Cheney Department of Veterans Affairs is worse than anything I have seen in the six Presidential administrations I have served with. At some point, this administration better stop appointing and hiring cronies, and at some point it might really take responsibility. Then we could have some real accountability for their incompetence. The American people suffer, the veterans are at risk, but those in responsibility get medals and promotions and the Republican Congress never gets to the bottom of what happened to make sure it will not happen again.

Rather than work on our privacy and identity theft legislation, rather than proceed on a bill protecting veterans, such as Senator AKAKA's or Senator KERRY's, we are being directed to another divisive debate on a proposed constitutional amendment. The White House calls the tune, and this Republican-led Congress is quick to dance to it. This is a White House that does not even list "veterans" as an issue on its Web site.

The Nation's veterans—who have been willing to make the ultimate sacrifice for their country—deserve better. In his second inaugural, while the Nation was fighting the Civil War, President Lincoln concluded with words that became the motto of the Veterans Administration and remains on metal plaques around the Vermont Avenue doors of the VA office here in Washington:

To care for him who shall have borne the battle and for his widow, and his orphan.

In this fundamental mission, this administration has lost its way.

What the Bush administration's budget says is that honoring veterans is not a priority, especially when it comes to medical care. The President's budget requests consistently fall short of the levels needed to provide necessary services and care. Secretary Nicholson had to admit a billion dollar shortfall last year after first issuing inaccurate and unfounded denials of his mismanagement. Secretary Principi before him had testified that the Veterans Department asked the White